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1950

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File No. O. Gujarat University/50

Legal DEPARTMENT

-H- BRANCH

Subject:—

Opinions under the Gujarat University Act, 1950

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File No. O. Gujarat University/50

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2 50 dated30-5-'56.

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MM

SC dated 30-5-'56.

Office of the R.L.A.

The question now raised has been considered in R.L.A's opinion No.7672 dated the 6th June 1950. That opinion was given with reference to colleges situate in Gujarat Area. But the same principle would equally apply to colleges situate in the territory which are outside the State of Bombay. There is this difference between the colleges in the University Area and the Colleges in territories outside the State of Bombay that in the latter case the affiliation is not withdrawn by the operation of law on the date on which section 5 comes into force (which date is to coincide with the date of the incorporation of the Gujarat University) but a further application for affiliation of a college is necessary under sub-section (4) ofsection 5 of the Act which sub-section not only empowers the University but also the State Government, to impose such conditions and restrictions as it thinks fit.

2. The draft letter at pages 28 is revised accordingly and a typed copy is sent herewith.

P M LAD.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6044 dated the 14th June 1950.

MM

56 dated 30-6-'50.

No. CAG/2292-U
Education Department,
Bombay Castle(Bombay No.1), June 1950.

To

The Registrar,
Gujarat University,
Ahmedabad.

Subject:- Gujarat University
- Affiliation of Colleges
in Saurashtra to the-

Sir,

With reference to your letter No. 405 dated the 13th May 1950 on the subject mentioned above, I am directed to state that as section 5 of the Gujarat University Act contemplates affiliation of the educational institutions to the corporation called the Gujarat University and as there can be no such corporation until the Senate, the Syndicate and the Academic Council of the Gujarat University are constituted, the colleges in Saurashtra cannot be affiliated to the Gujarat University at this stage. Attention is invited to sub-section (4) of section 5 of the Gujarat University Act and as that provision has not come into force any application for affiliation by the Colleges in Saurashtra is premature and legally incompetent. The applications should be made when that provision is brought into force and will have to be dealt with in accordance with that provision.

Yours faithfully,

Under Secretary to the Government of
Bombay, Education Department.

MM

GC dated 30-5-'50.

Office of the R.J.A.

It is not quite clear from these papers whether the institutions in question whose affiliation with the Bombay University was to expire on the 30th of June 1950, had applied to that University for continuing their affiliation. I am given to understand that they had, in fact, so applied but that the Bombay University was not quite willing to incur the expenditure for inspection etc., as eventually that would accure to the benefit of the Gujarat University. So long as the Gujarat University has not come into existence it was the duty of the University of Bombay to consider the applications made to them well in time and to take the necessary steps which the Bombay University Act, 1928, expects the University to take. Had that been done the affiliation would have continued and automatically the institutions would later on have got affiliated to the Gujarat University.

2. Section 66 of the Gujarat University Act, 1949, cannot be invoked for the purpose of granting affiliation to these institutions either to the Bombay University or to the Gujarat University. It cannot be said that any difficulty has arisen as to the first constitution or reconstitution of any authority of the Gujarat University; nor can it be said that any difficulty has arisen in first giving effect to those provisions of the Gujarat University as the relevant provisions of that Act in respect of affiliation are yet to be brought into force.

Contd.

3. The enquiries made with the Registrar of the University of Bombay show that the Vice-Chancellor of the Gujarat University actually appointed a Committee for the purposes of inspection, but the Vice-Chancellor cannot naturally grant affiliation as a result of the inspection. The only feasible course would be for the University of Bombay now to adopt the report of that Inspecting Committee and to proceed with the utmost expedition to grant affiliation to the institutions so as not to cause any inconvenience.

P.M LAD.

o/c

Remembrancer of Legal Affairs.

U.R.to E.D. No. 7073 dated the 6th June 1950.

issued

MM

SC dated 31-5-'56.

Office of the R.L.A.

The view taken by the Registrar, Gujarat University, in his letter dated the 13th June 1959, is correct.

2. As regards the last class of donors the Registrar has perhaps in view the donations entrusted by persons either to a body or person who were collecting funds for the Gujarat University. Such donations can be treated as donations "for the purposes of the University" within the meaning of that expression in paragraph (C) of "Class II - Ordinary Members" of section 16(1) of the Gujarat University Act, 1949. The Vice-Chancellor has been empowered under section 65(C) of that Act to make such financial arrangements as may be necessary to enable the Act or any part thereof to be brought into force; and under clause (f) of the said section, he is also empowered generally to exercise all or any of the powers conferred on the Syndicate by or under the provisions of the Act, which includes the power to accept donations on behalf of the University. Upon the acceptance by the Vice-Chancellor of the donations of this class, the donors will then be entitled to the privilege of electing members under paragraph (C) quoted above.

R.M.LAD
23/6

Remembrancer of Legal Affairs.

U.R. to E.D.No. 8700, dated the 24th June 1959.

37 dated 31-5-'56.

Draft Election Rule 20-A

Notwithstanding anything contained in the Statutes and Election Rules, the election of a Dean and of the Chairman of the Boards of Studies and of one Dean from amongst the Deans shall be held according to the following rules :-

(a) Notice of election of the Dean of a Faculty shall be given to all members of the Faculty at least 12 clear days before the day of the meeting and the election shall be held in accordance with Election Rules 26,27 and 28.

(b) Boards of Studies under each Faculty as laid down in Statute 78 shall be formed according to the provisions of section 25(2)(1), at the first meeting of that Faculty and the Boards of Studies under each Faculty shall immediately thereafter proceed to elect their Chairmen as required by section 25(3).

(c) The Deans of Faculties shall after they are elected proceed immediately to elect a representative to the Syndicate under the provisions of section 19(1)(iv)

[redacted]

56 dated 31-5-'56.

Legal Department.

The necessary draft file has been prepared in consultation with the U.S., E.D. and the Registrar, Gujarat University and has been handed over to the Registrar (a copy of which is enclosed).

18/9

Additional Secretary to Government.

U.R. to E.D.No. 18266 dated the 19th September '50.

Srbd. for signature.

Issued

C.S.R.
1919

50 dated 21-5-'50.

Legal Department.

Only Dr. Mohile's election is void.

2. It is necessary to hold a fresh by-election, if Dr. Mohile's election is declared void. There is no provision in the Gujarat University Act, 1949 empowering the Registrar to declare a candidate obtaining the next largest number of votes as duly elected.

3. The view taken in para. 3 of the Education Department's note at page 6 is correct.

4. In this case the Registrar of the Gujarat University should have obtained the ruling from the Vice-Chancellor whose duty it is under Sub-section (3) of section 11 of the Gujarat University Act to ensure that the Act, the Statutes, Ordinances and Regulations are faithfully observed. Now that the University is functioning from the 23rd November 1950, no reference to Government on the interpretation of the Act, the Statutes or Ordinances is competent under the Act. The Registrar may be informed that it is open to the University to consult its legal advisers on legal questions arising in the administration of its affairs. The powers of the Chancellor under section 58 of the Act cannot be invoked for the purpose on all occassions.

9/12

Additional Secretary to Government.

U.R. to H.D.No. 396-Confl. dated, 11th December 1950.

ist

SC dated 31-5-'56.

Legal Department.

The questions have not been raised in connection with specific elections which have already taken place and results of which have been declared. The questions have been raised generally to get the clarification of the meaning of some of the Statutes. The Statutes themselves, were provisional and were made under section 63 of the Act with a view to enable the Vice Chancellor for constituting the first authorities of the University and regulating procedure at their meetings and transactions of their business. They seem to have served the purpose inasmuch as the first elections have taken place. Not only that, but by two Government notifications in the Education Department, No.UGL 1050/U dated the 21st November , 1950, it has been directed that the authorities of the Gujarat University constituted under sub-section (1) of section 63 shall commence to exercise the functions with effect from the 23rd November, 1950 and by the second notification issued under section 1(3) of the Act, it has been directed that the remaining provisions of the Act shall come into force with effect from the 23rd November, 1950. It is provided in section 63(2)(b) that the first Vice-Chancellor shall frame the first Statutes, Ordinances and Regulations and submit them for confirmation to the respective authorities when they commence to exercise their functions. In these circumstances it cannot be held that any question has arisen for the exercise of the powers of the Chancellor under section 58 of the Act.

4/12

Additional Secretary to Government.

U.T. to E.D. No. 17136 dated 4-12-50.

MM 50 dated 31-5-'50.

Legal Department.

The contention of Dr.R.B.Mehta and others regarding the validity of the nomination of Dr. Mohile appears to be correct. Section 16(1) Class II (A) (iv) (g) of the Gujarat University Act, 1949 provides that registered graduates shall elect certain members in the manner specified in that clause, but it also further provides that such members shall not be persons who are teachers or secondary teachers of high schools or headmasters of high schools. It is no doubt true that Dr. Mohile whose name appears on the roll of registered graduates is entitled to vote and stand as a condidate from that constituency. But there is further disqualification that if such person happens to be a teacher, he is debarred from being elected from the said constituency. The Vadilal Sarabhai Hospital of Ahmedabad was recognised by the Vice-Chancellor of the Gujarat University under section 63(1)(a) of the Act on the 1st August 1950. Under section 2(12) of the Act "teachers" means professors, teachers, lecturers and such other persons imparting instruction in the University, an affiliated college or a recognised institution as may be declared to be teachers by the Statutes. Provisional Statute 1(3) (c) provides that for the purpose of the Provisional Statutes, "teachers" shall also include every member of the teaching staff of a recognised institution other than a demonstrator or a fellow or a tutor. As the Vadilal Sarabhai Hospital of Ahmedabad was recognised under section 63(1)(a) of the Act on the 1st August 1950 and as Dr. Mohile was a

member of the teaching staff of the said institution, he authomatically becomes a teacher within the meaning of section 2(12) of the Act, read with Provisional Statute 1(3)(c). On the day on which the scrutiny of the nomination took place, that is on the 11th August 1950, Dr. Mohile happened to be a teacher. There is nothing in section 16(1) Class II (A) (iv)(g) to suggest that the name of a person who is a teacher should appear on the electoral roll of teachers' constituency before he is prevented from standing as a candidate. The fact that Dr. Mohile's name did not appear in teachers' constituency would not entitle him to stand as a candidate from registered graduates constituency. In fact the said provision do contemplate that the same person can be a voter in the registered graduates constituency as well as in the teachers' constituency. The disqualification imposed by section 16(1) Class II (A) (iv) (g) consists only in a person standing as a candidate if he happens to be a teacher. In the case under consideration, Dr. Mohile being a teacher, he was disqualified from being nominated from registered graduates constituency.

2. It may be pointed out that under Provisional Statues 10 of the Gujarat University the Registrar has been authorised to prepare a roll of persons falling under the definition of "teachers" under respective Faculties, at least 49 clear days before the date of election. It is true that Dr. Mohile could not have been entitled to stand as a candidate from teachers' constituency as his name did not appear in the roll of that constituency. (Cf. Provisional rule 10 of the Gujarat university.) Under these provisions, there is no possibility of Dr. Mohile being entered on the

roll of teachers' constituency until the next election of representatives of that constituency is due. This fact, however, would not entitle him to continue to stand as a candidate from the registered graduates constituency for the reasons stated in paragraph 1 above. The contention of the Vice-Chancellor, therefore, that only because his name does not appear on the roll of teachers' constituency, he cannot be said to be a teacher is not correct.

25/10

Additional Secretary to Government.

U.R. "O" No. 200-L dated the 26th October 1950

Subd. for signature

P.A. use 25/10

[redacted]

5C dated 31-5-'50.

Legal Department.

It appears that the proposal is to amend the Gujarat University Act, 1949, providing for enabling the donors who have made donations in the past to any of the colleges or istitutions/situate in the Gujarat University area as also in Saurashtra to elect a representative on the senate. All the colleges in Saurashtra area appear to have been affiliated to the Bombay University. Under section 5(3) of the Act all the Educational Institutions situate within University area shall be deemed to be admitted to the privileges of the Gujarat University. The same cannot be said of the colleges in Saurashtra even though they are at liberty subject to the condition and restrictions imposed by sub-section (4) of section 5 of the Act to get themselves affiliated with Gujarat University. The Vice-Chancellor while making the proposal to amend the Act has assumed that all colleges in Saurashtra will take advantage of sub-section (4) of section 5 of the Act and will get themselves affiliated to the Gujarat University. He therefore also suggests that any donation to any college in Saurashtra should entitle the donor to elect a representative on the Senate under the Act. Under the Act a donor's right to elect a representative on the Senate is restricted by the following provisions of the Act -

(1) His right to elect member shall not extend beyond the period of 20 years from the date of acceptance of the donation;

(2) The value of the property is to be market value of the property ~~is~~ at the date of acceptance of the donation;

(3) If the donor is an undivided Hindu family, thrust firm, company or body corporate, for the purpose

of voting, the name of the representative nominated from time to time by each such family etc. is to be enrolled.

2. If it is decided, on principle, to give a right of a vote to elect the member of the Senate to a donor who has donated in the past to a college or institution situate either in Gujarat University area or Saurashtra the provisions for the following things will have to be made in the same Bill:-

(1) What should be the period upto which the right of voting should be exercised by such donor;

(2) What should be the basis for calculating the value of the property if the donation is in the form of property;

(3) To whom the right to vo voting should be given in the case of undivided Hindu Family, trust, firm, company or body corporate.

It would not be possible to make an express provision giving the right of voting to a donor who had already donated to a college in Saurashtra before the commencement of the Gujarat University Act. An express provision to that effect wouldbe bad on the ground of extra-territoriality. But when these colleges would be affiliated, the donors to these colleges along with the donors to the colleges in the University area would be entitled to the right of voting.

3. The Vice Chancellor in para 5 of the letter dated 24th july 1950 states that the elections are held at present and University bodies are likely to come into existence by September. It is presumed that the existing donors have elected their 5 representatives on the Senate as provided in paragraph (C) of sub-section (1) of section

Contd.

16 of the Act. If so, such members will continue to be members for a period of 5 years under sub-section (2) of section 16 of the Act. Even if the Act is amended in the manner suggested by the Vice-Chancellor the donors will not be entitled to exercise the right of voting until expiry of the period of 5 years of the present 5 members.

30/12

Additional Secretary to Government.

U.R.to E.D.No. 18490, dated the 30th December 1950-

Subd for signature.

MM

5C dated 30-5-56.